

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.16818 of 2024

Arising Out of PS. Case No.-536 Year-2023 Thana- MUFFASIL District- West Champaran

1. Maharaja Kumar, S/o Bhimal Patel @ Bhola Patel, R/o Village- Bakhariya, P.S. Majhauliya, District- West Champaran
2. Prem Kumar, S/o Manoj Patel @ Manoj Raut, R/o Village- Mirja Pur, P.S.- Majhauliya, Dist.- West Champaran

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Amrit Kirti, Advocate Mr. Akhileshwar Kumar Srivastava, Advocate
For the State	:	Md. Matloob Rab, APP
For the Informant	:	Mr. Dhananjay Kumar No.2, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

6 06-09-2024 Heard learned counsel for the petitioners, learned
APP for the State and learned counsel for the informant.

2. In the present case, the petitioners are apprehending their arrest in connection with Bettiah Mufassil (Manuapool) P.S. Case No. 536 of 2023, registered for the alleged offence under Section 302/34 of the Indian Penal Code.

3. As per prosecution case, the co-accused persons had been putting pillar adjacent to the land of the informant and some altercation took place between the father of the informant and the co-accused persons. During this altercation, co-accused Prince Kumar hit on the head of the father of the informant with spade causing its fracture and the father of the informant fell down. Thereafter, when the informant and his brother came for



his rescue, the petitioners and other co-accused persons assaulted them with *lathi* and *danda*. The father of the informant died in course of his treatment.

4. The learned counsel for the petitioners submits that the petitioners are innocent and have been falsely implicated in this case. The petitioners are men of unblemished character having no criminal antecedent. The entire prosecution case is false and fabricated and no such occurrence has ever taken place in the manner as alleged. The petitioners are distinctly related to co-accused Bidhyanath Raut @ Baiju Patel and they have no concern with the land dispute between the informant and Baidhyanath Raut. The petitioners are residents of different villages having different addresses and only due to relationship with the co-accused, the petitioners have been dragged in this case. The learned counsel further submits that only specific allegation is against co-accused Prince Kumar of hitting the father of the informant on his head with spade and the allegation against the petitioners and two other co-accused persons is of assaulting the brother of the informant with *lathi* and *danda*. But no injury has been mentioned and where the victims received treatment. In fact, neither the informant nor is brother were present at the place of occurrence and for this reason, there is no injury report on record. The learned counsel further submits that



so far as allegation under Section 302/34 IPC is concerned, there is no allegation against the petitioners that they even touched the body of the father of the informant in any manner. The learned counsel further submits that the co-accused person has been granted bail by this Court vide order dated 24.01.2024 passed in Cr. Misc. No.85775 of 2023.

5. Learned APP as well as learned counsel for the informant vehemently oppose the submission made on behalf of the petitioners. The learned counsel for the informant submits that the petitioners have been avoiding appearance before the learned trial court and processes under Sections 82 and 83 of Cr.P.C. have been issued and in these circumstances, the anticipatory bail is not maintainable. The learned counsel for the informant has referred to paragraph nos. 3, 4, 5, 19 & 20 of the decision dated 14.03.2024, in the case of ***Srikant Upadhyay & Ors. vs. State of Bihar & Anr. (Special Leave Petition (Crl.) No. 7940 of 2023)*** of the Hon'ble Supreme Court to buttress this fact that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code, he is not entitled to the relief of anticipatory bail.

6. At this stage, learned counsel for the petitioners



submits that there has been no execution report either of warrants or processes under Sections 82 and 83 of Cr.P.C., the processes under Sections 82 and 83 of Cr.P.C took place without any execution report of warrant.

7. Perused the record.

8. Earlier in the matter vide order dated 10.05.2024, the learned counsel for the informant was permitted to file counter affidavit along with documents to show that all processes were duly followed before the learned Sessions Court. Pursuant to the said order, counter affidavit has been filed along with copies of order-sheets starting from 29.01.2024 till 02.03.2024. On specific query about the execution report of the warrant issued earlier, the learned counsel for the informant submits that whatever document has been supplied to him by his client, the same has been brought on record by way of counter affidavit. Apparently, the order-sheets do not disclose about execution of the warrants against these petitioners, who are residents of places different from the informant and this fact is also apparent from the written report given by the informant.

9. A learned Co-ordinate Bench of this Court in the case of *Santosh Yadav @ Santosh Kumar Yadav*, in its order dated 04.07.2022 passed in Cr. Misc. No.38750 of 2021, when a similar issue arose, after discussing a number of decisions of



Hon'ble Supreme Court came to the conclusion that anticipatory bail application is maintainable even after issuance of process under Section 82 of the Cr.P.C. though the accused on merits may not be entitled to seek relief based on his conduct leading to issuance of process under Section 82 of the Cr.P.C. It is pertinent to mention here that while discussing the case law, the learned Co-ordinate Bench discussed the cases of ***Gurbaksh Singh Sibbia Vs. The State of Punjab*** reported in ***AIR 1980 SC 1632*** and ***State of Madhya Pradesh Vs. Pradeep Sharma*** reported in ***(2014) 2 SCC 171*** which was later on relied by the Hon'ble Supreme Court in the case of ***Prem Shankar Prasad Vs. State of Bihar & Anr.*** reported in ***(2022) 12 SCC 516*** which was subsequently relied on by the Hon'ble Supreme Court decision in the case of ***State of Haryana Vs. Dharamraj*** reported in ***2023 SCC Online 1085***. It is further pertinent to note that in **Santosh Yadav's** case (supra), the learned Co-ordinate Bench has extensively quoted the decision of Hon'ble Supreme Court in the case of ***Gurbaksh Singh Sibbia*** (supra) which was subsequently relied by another Constitution Bench of Hon'ble Supreme Court in the case of ***Sushila Aggarwal and others Vs. State (NCT of Delhi) and another*** reported in ***(2020) 5 SCC 1***. In ***Gurbaksh Singh Sibbia*** (supra), the Hon'ble Supreme Court has held that the anticipatory bail application is maintainable



even after filing of charge sheet or till person is not arrested.

10. Even in the case of *Srikant Upadhyay* (supra) what has been held by the Hon'ble Supreme Court is that a person continuously defying orders and keep absconding is not entitled to the relief of anticipatory bail. But the same will not deprive the power of the Court to grant pre-arrest bail in extreme exceptional cases in the interest of justice. Similarly in the case of *Lavesh vs. State (NCT of Delhi)* reported in (2012) 8 SCC 730, it has been held by the Hon'ble Supreme Court that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code is not entitled to the relief of anticipatory bail. However, it has nowhere been held that an application under Section 438 of the Code would be barred and not maintainable if the process under Section 82 of the Code has been issued and the person has been declared absconder.

11. Having regard to the facts and circumstances of the case and rival submission of the parties, this Court is of the view that the anticipatory bail application could be maintained even after issuance of process under Section 82 of the Cr.P.C. However, the conduct of the accused and other facts becomes important for entitlement of a person for grant of anticipatory



bail in such cases where process under Sections 82 and 83 of the Cr.P.C. have been issued. If a person against whom a warrant has been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Cr.P.C., he is not entitled to the relief of anticipatory bail. In other words there must be willful act of disobedience of the processes of the court. However, at the same time, it is to be reminded that the processes under Sections 82 and 83 of the Cr.P.C. are transient in nature and are means to secure appearance of accused before the court and thereafter, Sections 84, 85 and 86 of the Cr.P.C. deals with claims and objections to attachment, release, sale and restoration of attached property and appeal from order rejecting application for restoration of attached property, respectively. These provisions stress the temporary nature of proceeding under Sections 82 and 83 of the Cr.P.C. Infraction of personal liberty of an individual on the basis of such temporary provision would run counter to the scheme of Section 438 of the Cr.P.C. and hence an application under Section 438 of the Cr.P.C. would be maintainable.

12. Thus, in the light of aforementioned discussions and considering the fact that there is no execution report of warrants, no specific allegation against the petitioners and



apparent lack of injuries suffered by the victims and also considering strong possibility of false implication along with clean antecedent, let the petitioners above named, in the event of their arrest or surrender before the court concerned within a period of eight weeks from today, be released on bail, on furnishing bail bonds of Rs. 10,000/- (ten thousand) each with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Bettiah, West Champaran, in connection with Bettiah Mufassil (Manuapool) P.S. Case No. 536 of 2023, subject to the conditions mentioned in Section 438(2) of the Cr.P.C. and the following conditions:

- (i) One of the bailors will be a close relative of the petitioners.
- (ii) The petitioners will remain present on each and every date fixed by the court below, if so required by the learned trial court.

(Arun Kumar Jha, J)

V.K.Pandey/-

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